

Message Text

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ACTION EB-06

INFO OCT-01 ARA-06 EUR-08 IO-04 ISO-00 CIAE-00 DODE-00

NSAE-00 NSCE-00 SSO-00 USIE-00 INRE-00 L-01 FRB-01

OMB-01 TAR-01 SP-02 SWF-01 AGR-05 AID-05 COME-00

INR-05 LAB-01 OIC-01 RSC-01 SIL-01 STR-01 TRSE-00

CIEP-01 CEA-01 SS-15 NSC-05 AF-04 EA-06 NEA-06 DRC-01

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FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 6529

INFO USMISSION GENEVA

USMISSION EC BRUSSELS

USMISSION OECD PARIS

AMEMBASSY MEXICO CITY

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TREASURY PASS BRADFIELD

E.O. 11652: N/A

TAGS: UNCTAD, EGEN, ETRD

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES

1. PARALLEL TO NEGOTIATIONS IN SUBGROUP ON INVESTMENT UNDER AUSPICES OF AMBASSADOR MULIRO, GONZALEZ SOSA, MEXICAN UNDER SECRETARY OF STATE, HAS TAKEN INITIATIVE TO ARRANGE SERIES OF LUNCHEES OF KEY PARTICIPANTS IN EFFORT TO REACH AGREEMENT ON ESSENTIALS. FIRST SUCH LUNCH WAS UNPRODUCTIVE. AT SECOND, ON OCT. 17, GONZALEZ GALVEZ AND SCHWEBEL REACHED AGREEMENT IN PRINCIPLE ON A RENDERING OF ARTICLE 2 WHICH WOULD CONTAIN, IN A GENERALIZED AND VERY BRIEF FORM, FOLLOWING LIMITED OFFICIAL USE

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ELEMENTS: PERMANENT SOVEREIGNTY OVER NATURAL WEALTH

AND RESOURCES; RIGHT OF A STATE TO REGULATE FOREIGN INVESTMENT INCLUDING ACTIVITIES OF MNCs; RIGHT OF A STATE TO NATIONALIZE FOREIGN PROPERTY; EXERCISE OF THE FOREGOING RIGHTS IN OBSERVANCE OF INTERNATIONAL OBLIGATIONS AND INTERNATIONAL INVESTMENT AGREEMENTS. THE CONCEPT OF COERCION WOULD NOT BE DEALT WITH IN THIS ARTICLE, BUT IN A SEPARATE (THOUGH POSSIBLY ADJOINING) PARAGRAPH WHICH WOULD GENERALLY TREAT COERCION IN PRECISE TERMS OF FRIENDLY RELATIONS DECLARATION.

2. HOWEVER, EFFORTS TO IMPLEMENT THIS APPROACH SO FAR HAVE NOT WORKED OUT. A DRAFTING GROUP COMPOSED OF FREELAND (UK), STANFORD (CANADA), MULIRO (KENYA) AND SUKTIJASOVIC (YUGOSLAVIA) WAS NOT ABLE TO REACH AGREEMENT ON A UNIFIED DRAFT. TWO COMPETING DRAFTS WERE PRODUCED AND, IN SUBSEQUENT MEETING, EACH SIDE REJECTED THAT OF THE OTHER.

3. THE FREELAND FORMULA READS:

"EVERY STATE HAS FULL PERMANENT SOVEREIGNTY OVER ITS NATURAL RESOURCES AND ALL ITS ECONOMIC ACTIVITIES, INCLUDING THE RIGHT OF NATIONALIZATION. ACCORDINGLY, EVERY STATE HAS THE RIGHT TO REGULATE AND SUPERVISE FOREIGN INVESTMENT AND THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS WITHIN ITS JURISDICTION, AND TO ENTER FREELY INTO FOREIGN INVESTMENT AGREEMENTS. ALL STATES SHALL FULFILL IN GOOD FAITH THE TERMS OF SUCH AGREEMENTS AND, IN RESPECT OF THE FOREGOING RIGHTS, THEIR INTERNATIONAL OBLIGATIONS.

"NO STATE MAY USE OR ENCOURAGE THE USE OF ECONOMIC, POLITICAL OR ANY OTHER TYPE OF MEASURE TO COERCE ANOTHER STATE IN ORDER TO OBTAIN FROM IT THE SUBORDINATION OF THE EXERCISE OF ITS SOVEREIGN RIGHTS AND TO SECURE FROM IT ADVANTAGES OF ANY KIND.

"ALTERNATIVE VERSION

...THEIR INTERNATIONAL OBLIGATIONS, INCLUDING LIMITED OFFICIAL USE

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THOSE REQUIRING THEM TO REFRAIN FROM ANY FORM OF UNLAWFUL COERCION OF ANOTHER STATE IN ORDER TO OBTAIN FROM IT THE SUBORDINATION OF THE EXERCISE OF ITS SOVEREIGN RIGHTS AND TO SECURE FROM IT ADVANTAGES OF ANY KIND".

4. THE MULIRO FORMULA READS:

"EVERY STATE HAS FULL PERMANENT SOVEREIGNTY OVER ITS WEALTH, NATURAL RESOURCES AND ALL ITS ECONOMIC ACTIVITIES. ACCORDINGLY, EVERY STATE HAS THE INALIENABLE RIGHT TO EXERCISE EFFECTIVE CONTROL OVER THEM, INCLUDING THE RIGHT TO NATIONALISATION, AS WELL AS THE RIGHTS OF ENTERING FREELY INTO INVESTMENT AGREEMENTS ON THE IMPORT OF FOREIGN CAPITAL, OF REGULATION AND CONTROL OF FOREIGN INVESTMENTS AND REGULATION AND SUPERVISION OF THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS.

"IN RESPECT OF THE FOREGOING RIGHTS, ALL STATES SHALL FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS. ALL STATES SHALL ALSO REFRAIN FROM ANY FORM OF COERCION AGAINST STATES EXERCISING THESE RIGHTS."

5. USDEL MADE CLEAR THAT, WHILE FIRST ALTERNATIVE FREELAND TEXT APPEARED PROMISING, IT COULD NOT ACCEPT INCLUSION OF TEXT ON COERCION, WHICH IS VERBATIM FROM FRIENDLY RELATIONS DECLARATION, AS PARA. OF ARTICLE 2 BUT ONLY AS SEPARATE ARTICLE.

6. NEGOTIATIONS IN EFFORT TO ARRIVE AT A UNIFIED TEXT RESUME OCT. 18.

7. USSR HAS APPROACHED EC-9 PROPOSING THAT THEY JOINTLY MOVE FOR A FIFTH SESSION OF THE UNCTAD WORKING GROUP. EC IS CONSIDERING THIS IDEA AND WE ARE MAKING CLEAR OUR WILLINGNESS TO HAVE A FIFTH SESSION. GONZALEZ GALVEZ HAS TOLD US, HOWEVER, THAT GROUP OF 77 HAVE UNANIMOUSLY BACKED MEXICAN DEMAND THAT THE CHARTER BE DISPOSED OF BY CURRENT SESSION OF UNGA.
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